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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 OSCAR VILLANUEVA,	}	No. CV 16-492 SJO (FFM)
12 Petitioner,		ORDER RE SUMMARY
13 v.		DISMISSAL OF ACTION WITHOUT
14 C. PFEIFFER, WARDEN,		PREJUDICE
15 Respondent.		

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17 On January 22, 2016, Petitioner Oscar Villanueva (“Petitioner”) filed a  
18 Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”),  
19 pursuant to 28 U.S.C. § 2254. The Petition alleges various constitutional  
20 violations in connection with Petitioner’s prison disciplinary hearing that occurred  
21 on April 28, 2013. (Petition at 4).<sup>1</sup>

22 “Before a federal court may grant habeas relief to a state prisoner, the  
23 prisoner must exhaust his remedies in state court.” *O’Sullivan v. Boerckel*, 526  
24 U.S. 838, 842 (1999); *accord Rose v. Lundy*, 455 U.S. 509, 518-22, 102 S. Ct.  
25 1198, 71 L. Ed. 2d 379 (1982). The habeas statute explicitly provides that a  
26 habeas petition brought by a person in state custody “shall not be granted unless it  
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28 <sup>1</sup> All citations to filings in this case refer to the pagination provided by the  
Court’s electronic docket.

1 appears that -- (A) the applicant has exhausted the remedies available in the courts  
2 of the State; or (B)(i) there is an absence of available State corrective process; or  
3 (ii) circumstances exist that render such process ineffective  
4 to protect the rights of the applicant.” 28 U.S.C. § 2254(b)(1). Moreover, if the  
5 exhaustion requirement is to be waived, it must be waived expressly by the State,  
6 through counsel. *See* 28 U.S.C. § 2254(b)(3).

7 Exhaustion requires that the prisoner’s contentions be fairly presented to the  
8 state courts, and be disposed of on the merits by the highest court of the state.  
9 *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979). A claim has not been fairly  
10 presented unless the prisoner has described in the state court proceedings both the  
11 operative facts and the federal legal theory on which his claim is based. *See*  
12 *Duncan v. Henry*, 513 U.S. 364, 365-66, 115 S. Ct. 887, 130 L. Ed. 2d 865  
13 (1995); *Picard v. Connor*, 404 U.S. 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438  
14 (1971); *Johnson v. Zenon*, 88 F.3d 828, 830 (9th Cir. 1996). A federal court may  
15 raise the failure to exhaust issues *sua sponte* and may summarily dismiss on that  
16 ground. *See Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992)(citations  
17 omitted); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981) (*per curiam*);  
18 *see also Granberry v. Greer*, 481 U.S. 129, 134-35, 107 S. Ct. 1671, 95 L. Ed. 2d  
19 119 (1987).

20 Petitioner has the burden of demonstrating that he has exhausted available  
21 state remedies. *See, e.g., Brown v. Cuyler*, 669 F.2d 155, 158 (3rd Cir. 1982).  
22 Here, it plainly appears from the face of the Petition that Petitioner cannot meet  
23 this burden with respect to his claims. The Petition does not include any  
24 documents suggesting that Petitioner has exhausted the claims presently raised  
25 before this Court.<sup>2</sup> Additionally, a review of California Supreme Court records  
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27 <sup>2</sup> The Court notes that Petitioner has attached to the Petition two state court  
28 decisions, one from the Kern County Superior Court and the other from the Fifth  
Appellate District of the California Court of Appeal. (Petition at 13–15). However,

1 reveals that Petitioner has never filed a habeas petition with the California  
2 Supreme Court. *See* <http://appellatecases.courtinfo.ca.gov> (last visited February  
3 4, 2016).

4 Because Petitioner has not raised his present claims in the California  
5 Supreme Court, the Petition is unexhausted.

6 If it were clear that Petitioner is raising federal claims and that the  
7 California Supreme Court would hold that Petitioner's unexhausted federal claims  
8 are procedurally barred under state law, then the exhaustion requirement would be  
9 satisfied. In that event, although the exhaustion impediment to consideration of  
10 Petitioner's claims on the merits would be removed, federal habeas review of the  
11 claim would remain barred unless petitioner could demonstrate "cause" for the  
12 default and "actual prejudice" as a result of the alleged violation of federal law, or  
13 demonstrate that failure to consider the claims would result in a "fundamental  
14 miscarriage of justice." *See Coleman v. Thompson*, 501 U.S. 722, 750, 111 S. Ct.  
15 2546, 115 L. Ed. 2d 640 (1991). Here, it is neither "clear" that Petitioner is  
16 raising a federal claim nor that the California Supreme Court would hold that  
17 Petitioner's federal claim is procedurally barred under state law. *See, e.g., People*  
18 *v. Sorensen*, 111 Cal. App. 2d 404, 405 (1952) (noting that claims that  
19 fundamental constitutional rights have been violated may be raised by state habeas  
20 petition).

21 The Court therefore concludes that this is not an appropriate case for  
22 invocation of either exception to the exhaustion requirement regarding the  
23 existence of an effective state corrective process.

24 Therefore, the Petition is subject to dismissal.

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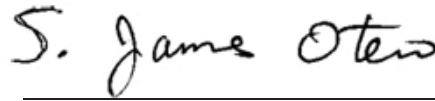
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28 these state opinions do not discuss the claims raised in the instant Petition. In any  
event, the claims discussed in the state court decisions are also unexhausted.

1 IT IS THEREFORE ORDERED that this action be summarily dismissed  
2 without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases  
3 in the United States District Courts.

4 LET JUDGEMENT BE ENTERED ACCORDINGLY.

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6 Dated: February 12, 2016.



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S. JAMES OTERO  
United States District Judge

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9 Presented by:

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11 /S/ FREDERICK F. MUMM  
12 FREDERICK F. MUMM  
13 United States Magistrate Judge  
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